

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS AND REHABILITATION),

Respondent.

Case No. SA-CE-1825-S

PERB Decision No. 2250-S

April 18, 2012

Appearances: Leanne M. Kent, Staff Legal Counsel, for California Correctional Peace Officers Association; Department of Personnel Administration by Stephen Booth and Heather N. Bendinelli, Labor Relations Counsels, for State of California (Department of Corrections and Rehabilitation).

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California Correctional Peace Officers Association (CCPOA) from a partial dismissal of its unfair practice charge. The charge alleged that the State of California (Department of Corrections and Rehabilitation) (CDCR) violated the Ralph C. Dills Act (Dills Act)¹ by failing to meet and negotiate in good faith over the effects of various policy changes. Among those policy changes were: scheduling of Casework Specialists working as Casework Managers in the Division of Juvenile Justice (DJJ), and scheduling of correctional officers in the California Rehabilitation Center (CRC).

¹ The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

On June 1, 2011, the Board agent issued a complaint on several of CCPOA's allegations. The Board agent dismissed the remainder of the allegations for failure to state a prima facie case. On June 21, 2011, CCPOA appealed the partial dismissal of its allegations, challenging only dismissal of the allegations concerning changes to scheduling of Casework Specialists working as Casework Managers in the DJJ and allegations concerning changes to scheduling of correctional officers in the CRC. On July 18, 2011, CDCR filed its opposition to the appeal.

DISCUSSION

Request to Dismiss a Portion of Appeal

By letter dated October 18, 2011 from CCPOA, the parties notified PERB that they settled various disputes, including, inter alia, their dispute over the effects of changes to scheduling of Casework Specialists working as Case Managers in the DJJ. The parties request, inter alia, that the following be dismissed: CCPOA's appeal of "the issue appealed to the Board on June 21, 2011, relating to the scheduling of Casework Specialists working as Casework Managers in the Division of Juvenile Justice." The parties do not request to dismiss the other issue appealed by CCPOA to the Board on June 21, 2011, to wit, allegations concerning scheduling of correctional officers in the CRC. The parties' request to dismiss which we will grant pertains only to the issue relating to the scheduling of Casework Specialists working as Casework Managers in the DJJ. The Board has reviewed the entire record and finds the dismissal of CCPOA's appeal on this issue to be in the best interests of the parties and consistent with PERB law and the Board's longstanding policy of encouraging the voluntary settlement of disputes. (See *Office of the Santa Clara County Superintendent of Schools* (1982) PERB Decision No. 233a.)

CCPOA's Appeal

In granting CCPOA's request for dismissal of a portion of the appeal, only one issue remains for our disposition in this appeal, to wit, allegations concerning refusal of CDCR to meet and negotiate in good faith over effects of changes to scheduling of correctional officers in the CRC. We turn now to that matter.

CCPOA notes, correctly, that the Board agent's warning letter omitted reference to the allegations in its initial statement of charge (p. 3, item C, subd. 1) concerning "Change to Start/Stop Times" of correctional officers at CRC. CCPOA asserts that by this omission the Board agent failed to comply with PERB Regulation 32620(d).²

CDCR's Response

CDCR filed a late response, and moves for leave to do so. It explains that its practice with PERB appeals is to presume service by mail and to docket its response for 25 days from receipt of an appeal, to wit, 20 days plus five days for service by mail documents. CDCR notes, correctly, that the minimal delay of five days did not prejudice either CCPOA or PERB. While we find CDCR's practice improvident at best, in this instance and given our disposition of this matter, we will find good cause to excuse the late filing. (PERB Reg. 32136.)

CDCR responds that the Board agent properly dismissed the allegations concerning refusal of CDCR to meet and negotiate in good faith over effects of changes to scheduling of correctional officers in the CRC. Given our disposition of this matter, we will not reach that question.

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Disposition

In its amended statement of charge (p. 4, item C, subd. 1) CCPOA expanded its allegations on the issue of changes to the scheduling of correctional officers at the CRC. The Board agent's subsequent partial dismissal letter describes the expanded allegations on this issue (partial dismissal letter, p. 7), but then fails to analyze their sufficiency for purposes of establishing a prima facie case.³ Accordingly, we are unable to determine whether the Board agent intended but failed to include these allegations in the complaint, or instead intended but failed to dismiss them.

Based on the entire record of this case, including the warning and partial dismissal letters, CCPOA's appeal and CDCR's response thereto, we conclude that the issue raised on appeal by CCPOA, the status of its allegations concerning refusal of CDCR to meet and negotiate in good faith over effects of changes to scheduling of correctional officers in the CRC, must be remanded to PERB's Office of the General Counsel, either for issuance of a complaint or dismissal.⁴

ORDER

The parties' request to withdraw and dismiss the California Correctional Peace Officers Association's (CCPOA) appeal of the issue appealed to the Board on June 21, 2011, relating to the scheduling of Casework Specialists working as Casework Managers in the Division of Juvenile Justice in Case No. SA-CE-1825-S is hereby GRANTED.

³ Reference in the partial dismissal letter at page 11 to a "proposed gun locker at Transportation Headquarters" deals with a different CCPOA allegation concerning changes to a transportation policy for extradition bureau correctional officers, which is not at issue on appeal.

⁴ We note that the case file reveals the complaint in this matter was withdrawn by CCPOA on October 11, 2011, pursuant to a settlement between the parties.

The appeal by CCPOA from the partial dismissal of its allegations concerning refusal of the State of California (Department of Corrections and Rehabilitation) to meet and negotiate in good faith over effects of changes to scheduling of correctional officers in the California Rehabilitation Center in Case No. SA-CE-1825-S is hereby GRANTED, and the issue is REMANDED to the Public Employment Relations Board's Office of the General Counsel either for issuance of a complaint or dismissal.

Chair Martinez and Member Dowdin Calvillo joined in this Decision.